

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

FRANKLIN TUCK MCVAY,

Plaintiff,

v.

CIVIL ACTION NO. 1:19-00521

DR. WILLIAM GOODE,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Aboulhosn submitted to the court his Findings and Recommendation on December 12, 2019, in which he recommended that the court construe plaintiff's "Motion to Dismiss Without Prejudice and/or Leave to Amend Pursuant to Rule 41(b) of the Fed. R. Civ. P.", ECF No. 23, as a Motion for Voluntary Dismissal Pursuant to Rule 41(a)(2) and then grant the construed Motion for Voluntary Dismissal, dismiss without prejudice plaintiff's Complaints, see ECF Nos. 2 and 11, and remove this matter from the court's active docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days and three mailing days in which to file any objections to Magistrate Judge Aboulhosn's Findings and Recommendation. The failure of any party to file

such objections within the time allowed constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Objections to the Proposed Findings and Recommendation were due by December 30, 2019. Neither party filed any objections to the Magistrate Judge's Findings and Recommendation within the requisite time period.

Accordingly, the court adopts the Findings and Recommendation of Magistrate Judge Aboulhosn as follows:

1. The court **CONSTRUES** plaintiff's "Motion to Dismiss Without Prejudice and/or Leave to Amend Pursuant to Rule 41(b) of the Fed. R. Civ. P." as a Motion for Voluntary Dismissal Pursuant to Rule 41(a)(2);
2. The construed Motion for Voluntary Dismissal is **GRANTED**;
3. Plaintiff's Complaints are **DISMISSED WITHOUT PREJUDICE**; and
4. This case is to be removed from the court's active docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and unrepresented parties.

IT IS SO ORDERED this 13th day of January, 2020.

ENTER:

David A. Faber

David A. Faber

Senior United States District Judge